



May 23, 2000

Mr. Boyd Kennedy
Staff Attorney
Law Enforcement Division
4200 Smith School Road
Austin, Texas 78744-3291

OR2000-2027

Dear Mr. Kennedy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135834.

The Texas Department of Parks and Wildlife (the “department”) received a written request for the promotional examination previously taken by the requestor. You contend that the examination at issue is excepted from disclosure under section 552.122(b) of the Government Code. We have considered the exception you raised and reviewed the information at issue.

Section 552.122(b) excepts from required public disclosure a “test item developed by a . . . governmental body.” Gov’t Code § 552.122(b). Section 552.122(b) is applicable only where the test item constitutes a “standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated”; therefore, this exception does not apply to evaluations of an employee’s overall job performance or suitability. Open Records Decision No. 626 at 6 (1994). Whether information falls within the section 552.122(b) exception must be determined on a case-by-case basis. *Id.*

After reviewing the information at issue, we agree that each of the examination questions constitutes a “standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated.” The department therefore may withhold the promotional examination pursuant to section 552.122(b) of the Government Code, subject to the following qualification.

In reaching our conclusion here, we assume that you requested a decision from this office regarding this matter within ten business days of the *department’s* receipt of the records

request. *See* Gov't Code § 552.301(b). The date that the *addressee* actually received the request does not establish the starting point for the ten day deadline.¹ If you did not request a decision from this office in a timely manner, the requested information is presumed to be public and must be released to the requestor. *See* Gov't Code § 552.302.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

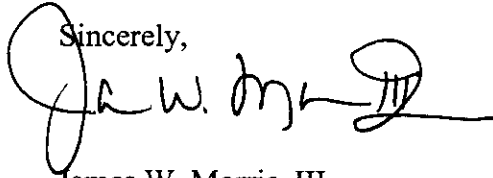
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

¹The request for information is dated March 3, 2000. You have represented that the addressee received the request on March 20, 2000. We note, however, that the request for information contains notations that suggest that the department may have received that request as early as March 4, 2000. If the department in fact received the request on March 4, 2000, your request for an open records decision was untimely.

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a stylized "W".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/ljp

Ref: ID# 135834

Encl. Submitted documents

cc: Mr. Lewis Rather
309 Sidney Baker South
Kerrville, Texas 78023
(w/o enclosures)